

## Overview of EB-5 Program

### The EB-5 Investment Visa

The EB-5 Visa for Immigrant Investors is a United States visa created by the Immigration Act of 1990. The EB-5 Visa provides a method of obtaining a Green Card for foreign nationals who invest money in the United States. Minimum investment ranges from \$500,000 to \$1 million depending on the area within the EB-5 District.

To obtain the visa, individuals must invest at least \$500,000 USD, creating at least 10 jobs. By investing in certain qualified investments or regional centers with high unemployment rates, the required investment amount is \$500,000. Other areas within a designated EB-5 area require a minimum of a \$1,000,000 and the creation of at least 10 jobs.

The Immigrant Investor Pilot Program was created by Section 610 of Public Law 102-395 on October 6, 1992. This was in accordance to a Congressional mandate aimed at stimulating economic activity and job growth, while allowing eligible aliens the opportunity to become lawful permanent residents.

This "Pilot Program" required only \$500,000 of investment in exchange for permanent resident status. The investment could only be received by an economic unit defined as a Regional Center.

### EB-5 Visa Privileges

For people wishing to live, work or retire anywhere in the USA that can afford to invest \$500,000 for at least five years, the EB5 visa is an option worth considering.

EB-5 visas are suitable for a variety of people that have the means to qualify for the minimum investment.

Professionals, business people, foreign students, retirees and current non-immigrant visa holders are amongst people that choose the EB-5 Visa route.

Simply put, the EB-5 visa gives you the flexibility to do what you want in the USA.

## EB-5 Visa Benefits

- A direct route to a Green Card
- No day-to-day business management
- Permanent residency in the United States for you, your partner and any children under 21
- Live, work and retire anywhere in the United States
- Become a U.S Citizen after 5 years of being a green card holder
- No Quota Backlogs - There are many delays and backlogs for employment and family based green card categories but there is no backlog for the EB-5 Visa Investor category.
- No Sponsor Needed - Foreign investors use their own personal funds and do not require sponsorship from either an employer or a family member.

## EB-5 Visa Investment Requirements

### Investment Amount - Designated Regional Centers

The investor is required to invest a reduced amount of \$500,000 as the EB-5 Visa investments are within a Targeted Employment area (TEA). This \$500,000 amount is the minimum allowed by U.S law to qualify for the EB-5 Visa/Green Card in a high unemployment area (TEA) which is defined as 150% of the national average unemployment statistic.

### Job Creation Requirements

Each foreign national EB-5 Visa Investor must create at least 10 full time U.S. based jobs as a result of their investment.

In Designated Regional Centers, the job creation requirement can utilize both direct and indirect job creation to prove they have met the USCIS requirement.

If the investment is not in an approved regional center the jobs must be directly created by the entity the investor is investing in.

### Source of Investment Funds

The investor must demonstrate that their \$500,000 EB-5 Visa investment capital is from a legal source.

The regulations prohibit the use of assets acquired, directly or indirectly, by unlawful means (such as criminal activities).

It is required to document the legal acquisition of the EB-5 Visa investment funds.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Simply stating without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof.

The EB-5 Investor can also show a "pattern of income" to justify the EB-5 investment. Income tax records should be submitted, preferably for a period beyond the five years required by the regulations. Also provide savings and personal investment records to prove that even if a petitioner has not earned a substantial annual income, there is a credible claim that the necessary funds were accumulated over time.

**An investor may receive a gift of funds** however in that case the USCIS will require information and track the source of the funds from the person who gave the gift.

**Proving the Source of Funds obtained by loan.** Clearly, it is difficult enough to prove that one's own funds are, indeed, one's own. When the funds are obtained by loan, there may be even greater scrutiny. The regulations expressly prohibit using loan money for EB-5 Visa purposes if the loan is obtained by using the new commercial enterprise as security. It does not matter if the loan is from a third party lender or the enterprise itself. In either case the petition will be denied if the loan is secured by the new commercial enterprise.

### **The EB-5 Visa investment must be at risk**

The EB-5 Visa applicant's capital investment must be truly at risk and not simply a loan.

There can be no guarantees on an EB-5 Visa Investment, the investment must be 'at-risk' as per federal guidelines. There can be no mention of redemption rights or guarantees.

Guarantees of return of any capital are strictly prohibited, and if given negate the 'at risk' requirement of the EB-5 law and the investors petition will be denied. The entire capital must be at risk and therefore reserve accounts are also not allowed.

## **Conditional Lawful Permanent Residence (CLPR)**

As part of immigration reform under the Immigration Reform and Control Act of 1986 (IRCA), as well as further reform enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), persons who are eligible and properly apply for permanent residence based on either a recent marriage to a U.S. citizen or as an investor are granted permanent residence on a conditional basis for two years.

The expiration date of the conditional period is two years from the approval date. When this two-year conditional period is over, the permanent residence automatically expires and the applicant is subject to deportation and removal.

To avoid this, 90 days or less before the conditional residence expires, the applicant must file I-829 Petition by Entrepreneur to Remove Conditions (if conditional permanent residence was obtained through investment) with USCIS to have the conditions removed.

Upon approval, the applicant is then free from the conditional requirement.

It is important to note that this two-year conditional residence period counts towards time as a permanent resident for all purposes including naturalization.

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For further information contact:

Terry Murphy, CEcD | Vice President, Economic Development  
Muncie-Delaware County, Indiana Economic Development  
Alliance  
401 South High Street, Muncie, Indiana 47305  
T: 765.751.9104 | M: 765.760.0188 | F: 765.751.9151  
[www.muncie.com](http://www.muncie.com) | [tmurphy@muncie.com](mailto:tmurphy@muncie.com)